

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

**UNITED STATES OF AMERICA FOR §
THE USE AND BENEFIT OF RICHARD §
PARRILLA, d/b/a SILVERADO CUSTOM §
DOOR & WINDOW, and LORI §
PARRILLA, d/b/a SILVERADO CUSTOM §
DOOR & WINDOW, §
Plaintiffs, §**

vs. §

**RMA LAND CONSTRUCTION, INC., §
and EDMUND SCARBOROUGH, §
INDIVIDUAL SURETY, §
Defendants. §**

Civil Action No. _____

COMPLAINT

Plaintiffs Richard Parrilla, d/b/a Silverado Custom Door & Window, and Lori Parrilla, d/b/a Silverado Custom Door & Window, by way of complaint against Defendants RMA Land Construction, Inc. ("RMA") and Edmund Scarborough, Individual Surety, ("Scarborough") hereby allege as follows:

NATURE OF THE ACTION

1. This complaint arises out of RMA's refusal to pay Silverado for the installation of hollow metal doors, frames, hardware, and bullet-resistant windows provided in connection with a construction project known as Access Control Point (ACP) Project located at Fort Hood, Texas. For this project, RMA acted as the general contractor and Silverado served as a subcontractor.

2. Plaintiffs also assert a "Miller Act" claim pursuant to 40 U.S.C. §3131(b)(2) against Edmund Scarborough, individual surety, as the surety on a payment bond he issued on this construction project to ensure that subcontractors like Silverado would be paid.

THE PARTIES

3. Pursuant to the provisions of 40 U.S.C. § 3133(b)(3)(A), this suit is brought in the name of the United States for the use and benefit of Silverado, whose address is 14838 Stephens Co. Rd. 166, Graham, TX 76450.

4. Defendant RMA Land Construction, Inc. is a foreign for-profit corporation that can be served by delivering a copy of this complaint along with a citation to its registered agent, National Registered Agents, Inc., at 1999 Bryan St., Ste. 900, Dallas, TX 75201.

5. Defendant Edmund Scarborough is an individual who can be served by delivering a copy of this complaint along with a citation at 1921 Frays Ridge Xing, Earlysville, VA 22936 or at 344 Glenwood Station Lane, Suite 104, Charlottesville, VA 22901.

JURISDICTION

6 This is a Miller Act payment bond claim arising under the laws of the United States, Title 40 §§ 3131-3134 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 40 U.S.C. § 3133(b)(3)(B). This Court has pendent jurisdiction and supplemental jurisdiction over the state law claims alleged in this Complaint pursuant to 28 U.S.C. § 1367.

VENUE

7. The construction project and the contract made the basis of this Complaint were performed in part in Young County, Texas. Therefore, venue in this Court is proper pursuant to 40

U.S.C. § 3133(b)(3)(B) and 28 U.S.C. § 1391(b)(2).

FACTUAL BACKGROUND

8. RMA has a written Subcontract Agreement with Silverado whereby Silverado agreed to provide and install hollow metal doors, frames, hardware, and bullet-resistant windows at the project known as Access Control Point (ACP) located at Fort Hood, Texas. A copy of the contract is attached hereto as Exhibit "A." The contract is secured by a bond guaranteed by Scarborough.

9. Under the terms of the parties' Subcontract Agreement, RMA agreed to pay Silverado \$42,198.00 for the installation of hollow metal doors, frames, hardware, and bullet resistant windows. Silverado completely and timely performed all contractual obligations. RMA, however, has failed to pay the balance of \$16,968.67. A copy of Silverado's Application and Certification for Payment is attached hereto as Exhibit "B."

10. Although Plaintiffs have made demand for payment of the \$16,968.67 balance owed under the Subcontract Agreement, both RMA and Scarborough have failed and refused to make payment. A copy of Plaintiff's demand letter is attached hereto as Exhibit "C."

COUNT I: TRUST FUND VIOLATION

11. Silverado repeats and realleges the allegations in paragraphs 1 through 10 above as if fully set forth herein.

12. Plaintiffs hereby sue RMA pursuant to section 162.001 et seq. of the Texas Property Code. RMA is in receipt of construction funds for which Plaintiffs are beneficiaries. RMA has misapplied these trust funds causing Plaintiffs to suffer damages in the amount of \$16,968.67 for which Plaintiffs hereby sue RMA.

COUNT II: MILLER ACT BOND CLAIM

13. Silverado repeats and realleges the allegations of paragraphs 1 through 10 above as if fully set forth herein.

14. Plaintiffs assert a cause of action against Scarborough pursuant to 40 U.S.C. §3133. Scarborough is obligated, pursuant to the above-referenced bond, to pay Silverado for the services it provided in prosecution of the work required by the contract and for which RMA has failed to pay.

15. Scarborough has failed to fulfill his obligations under the bond by failing to pay Silverado despite having been provided with copies of all supporting documentation that establishes Silverado's claim. Therefore, Plaintiffs have suffered damages in the amount of \$16,968.67 for which Plaintiffs hereby sue Scarborough.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully demand judgment for themselves and against Defendants as follows:

- a. That this Court award Plaintiffs judgment against Defendants, jointly and severally, in the amount of \$16,968.67 as well as an award of pre- and post-judgment interest;
- b. That this Court award Plaintiffs reasonable and necessary attorney's fees and costs of suit; and
- c. That this Court award Plaintiffs such other relief as the Court may deem just and proper.

Respectfully submitted,

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**Attorneys for United States of America for the
use and benefit of Richard Parrilla , d/b/a
Silverado Custom Door & Window, and Lori
Parrilla, d/b/a Silverado Custom Door &
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